

Attorney Docket No: 644/37423
PATENT

SEP 1 2006

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Emad El HAJE Confirmation No. 1690
Serial No.: 10/774,451 Art Unit: 3732
Filed: February 10, 2004 Examiner: Melba N. Bumgarner
For: METHOD AND DEVICE FOR POSITIONING GUM LINE
ABOUT DENTAL REPLACEMENT TEETH SURFACES

REPLY BRIEF UNDER 37 CFR 1.193

Mail Stop Appeal Brief - Patents
Commissioner for Patent
P.O. Box 1450
Alexandria, VA 22313-1450

BARNES & THORNBURG CUSTOMER NO.:

23646

U.S. PATENT AND TRADEMARK OFFICE

Sir:

In response to the Examiner's Answer of July 14, 2006, Applicant offers this Reply Brief directed ONLY to such new points of argument as raised in the Examiner's Answer.

The Examiner's Answer newly contends: that the recitation of "tool for forcing soft gum tissue of a patient around a tooth" is not a means plus function limitation AS IT LACKS THE PROPER PHRASING.

The withdrawal of the rejection of Claims 21 and 22 is noted.

The Examiner also newly contends that the strand tool of Robertson "has portions of its cross-section to be of circular configuration (col. 2, line 47), i.e., cross-section sliced through a plane of the tool". The Examiner is flat wrong. A slice through a plane of Robertson would produce a hollow cylinder not a "circular configuration" as claimed. A portion of this hollow cylinder is also not circular, but rather arcuate. Applicant's specification clearly shows its circular configuration and thus the meaning is clear and cannot be distorted as attempted by the Examiner. "Ring form" is not a circular cross-section much less one "so as to facilitate rolling downward of the endless strand over the sides of a tooth to the gum line of the patient" AS CLAIMED. The Examiner is twisting the claim language to allegedly read on the prior art also ignores the above quoted limitation in the claims.

The Examiner's contention that 35 U.S.C. 112, sixth paragraph is not invoked as the words "means for" or "step for" are not used, is not a proper interpretation of 35 U.S.C. 112, paragraph six. As clearly announced at 2181 MPEP: Although the use of the term "means", particularly "means for", generally invokes 35 U.S.C. 112, sixth paragraph and the use of a different formulation generally does not, THERE IS NO PARTICULAR LANGUAGE THAT MUST APPEAR in a claim for it to fall within the scope of 35 U.S.C. 112, sixth paragraph...it must be clear that the element in the claim is set forth, at least in part, by the function it performs as opposed to the specific structure, material, or acts that perform the function.

The specification and Applicant's arguments clearly indicate that use of 35 U.S.C. 112, sixth paragraph, was intended and the fact that "means" does not appear is immaterial.

Further, it is improper for the Examiner to take recited alternatives from the specification as a teaching of the prior art. Applicant's alternative, even when not claimed, cannot be used by the Examiner to show obviousness. There was no admission by the Applicant that the alternatives were known prior art.

The Examiner's new contention that "the suggested material of hard and soft leathers" can be easily sterilized by irradiation, such as gamma or electron beam irradiation, is not believed to be accurate, and is not supported by any teaching provided by the Examiner.

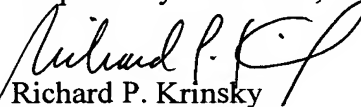
Again the fact that the specification may indicate alternative coatings does not provide support for the Examiner to utilize a "vaso-constrictor" as MEDICINE COATING which is what was claimed. The fact that Applicant present claims that do not require "biodegradable" does not mean that the Examiner can ignore that limitation in Claim 14.

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Summary

The new rationale does not support the Examiner's new unpatentable contentions and hence Claims 1-20 should be allowed.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and shortages in other fees, be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg LLP, Deposit Account No. 02-1010 (644/37423).

Respectfully submitted,



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